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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai

Summary

The present report is the fourth by the Special Rapporteur on the rights to freedom of peaceful assembly and of association submitted to the Human Rights Council pursuant to Council resolutions 15/21 and 24/5.

In sections I and II of the report, the Special Rapporteur provides an overview of the activities he carried out between 1 March 2014 and 28 February 2015. In section III, he addresses legislation and practices concerning natural resource exploitation that present challenges to the exercise of the rights to freedom of peaceful assembly and of association.

The Special Rapporteur outlines his conclusions and recommendations to various stakeholders in section IV.

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I. Introduction

1. The present report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association is submitted to the Human Rights Council pursuant to Council resolutions 15/21 and 24/5. It covers activities carried out between 1 March 2014 and 28 February 2015 and addresses legislation and practices in the context of natural resource exploitation that violate the rights to freedom of peaceful assembly and of association. At the end of the report, the Special Rapporteur addresses recommendations to various stakeholders with a view to better promoting and protecting the rights under his mandate.

2. To prepare the present report, the Special Rapporteur convened an expert consultation in Bangkok on 15 and 16 December 2014. He also benefited from the responses of States and civil society entities to a questionnaire distributed on 17 December 2014. He regrets that he did not receive any responses from business entities. He is most grateful to all who contributed to his report with responses. In accordance with Human Rights Council resolution 15/21, he took into account relevant elements of work available within the Council and the United Nations system.[1]

II. Activities

A. Communications

3. The Special Rapporteur sent a total of 189 communications between 1 March 2014 and 28 February 2015. His observations on communications addressed to States and on the replies received are contained in an addendum to the present report (A/HRC/29/25/Add.3).

B. Country visits

4. The Special Rapporteur visited Oman from 8 to 13 September 2014 and Kazakhstan from 19 to 27 January 2015. He thanks both Governments for their cooperation before and during the visits. During the reporting period, the Special Rapporteur renewed the pending requests to Canada, Chile and India. He also made additional requests to Kenya, Nepal, the Republic of Korea and Singapore.[2] He is grateful to the Government of Kenya for extending an invitation, which he hopes to honour soon.

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[1] Country situations mentioned in the present report include cases that have been the subject of previous communications sent to Governments, as well as press releases and reports issued by special procedures mandate holders and high-level United Nations officials and reports from Member States, multilateral institutions and civil society organizations. The Special Rapporteur has also made use of responses to a questionnaire sent to Member States, associations and businesses on this topic. Available from www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/RepliesNaturalResourceExploitation.aspx#states.

[2] For more information on country visits, see www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/CountryVisits.aspx.

C. Participation in various events

5. The Special Rapporteur took part in the following events:

(a) Meeting with the Secretary-General of the Organization of American States, the Chair of the Permanent Council, permanent representatives to the organization and the Inter-American Commission on Human Rights in Washington, D.C. (9 April 2014);

(b) Expert consultation on the Special Rapporteur's report to the sixty-eighth session of the General Assembly in Istanbul (27 and 28 June 2014);

(c) Academic visit to Bujumbura (21 and 22 July 2014);

(d) Follow-up visit to Kigali (25 and 26 August 2014);

(e) Regional consultation with civil society activists from South and South-East Asia in Kathmandu and academic visit to Dhaka organized by the Asian Forum for Human Rights and Development (18–22 September 2014);

(f) Regional dialogue with Governments from the region of the Organization for Security and Cooperation in Europe organized by the Community of Democracies in Warsaw (22 October 2014);

(g) Round-table discussions and bilateral meetings with representatives of civil society from Latin America organized by the International Center for Not-For-Profit Law and the World Movement for Democracy, and meetings with the representatives of the Inter-American Commission on Human Rights and the Permanent Representative of Jamaica to the Organization of American States in Washington, D.C. (29 and 30 October 2014);

(h) Regional dialogue with civil society organizations organized by the Community of Democracies, the World Alliance for Citizen Participation and the International Center for Not-for-Profit Law in Pretoria (17 and 18 November 2014);

(i) World Assembly of the World Alliance for Citizen Participation, Johannesburg, South Africa (21–24 November 2014);

(j) Expert consultation to discuss the present report (15 and 16 December 2014) and regional consultation organized by the World Movement for Democracy in Bangkok (17 and 18 December 2014);

(k) Meeting with the Minister of Foreign Trade and Development Cooperation of the Netherlands and participation in the Dutch Ambassadors Conference at The Hague, Netherlands (28–30 January 2015);

(l) Planning meeting with various stakeholders organized by the Special Rapporteur in Kenya (18 and 19 February 2015).

III. Rights to freedom of peaceful assembly and of association in the context of natural resource exploitation

A. Background

6. The global economy relies heavily on the availability and exploitation of natural resources.[1] With the industrialization of emerging economies and the ever-increasing needs of older market-economy countries, the demand for natural resources has increased dramatically. With that demand has come a plethora of concerns relating to the sustainability of economic growth and its impact on the climate, the environment and, more generally, on human rights.

7. Increased demand for resources has resulted in the opening up of more areas for exploration and exploitation, especially in populated areas, leading to conflict between competing interests. By some accounts, between 93 and 99 per cent of 73,000 mining, logging, agriculture, oil and gas concessions in eight tropical forested countries were inhabited.[4] The same sources indicate that, for example, up to 40 per cent of the territory of Peru has been handed over by the Government to private for-profit entities to exploit natural resources and that in Liberia and in Indonesia 35 and 30 per cent, respectively, of the land is in the hands of the private sector for exploitation operations. The existence of widespread social conflict associated with natural resource exploitation is therefore not surprising. For example, in Peru, the Ombudsman's Office documented 211 social conflicts in the month of February 2015, 66 per cent of which were related to natural resource exploitation.[5] In Colombia, the Ombudsman's Office participated in 218 dialogues between mining companies, protestors and the Government.[6]

8. Moreover, many resource-rich countries suffer from low levels of development, particularly human development, endemic corruption and economic and political instability — the "resource curse". This, despite a widely shared understanding that natural resources are managed by Governments on behalf of their citizens: an understanding which many countries enshrine in law. The Constitution of Burkina Faso, for example, provides that citizens may petition individually or collectively against acts that harm the environment or the interests of communities.[7] A large proportion of the world's poor lives in resource-rich

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[1] For purposes of the present report, the Special Rapporteur takes a broad view of "natural resources", taking the term to encompass a wide range of materials, including land, water, soil, air, coal, oil, gas, other mineral and precious metal deposits, flora and fauna, forests and timber. Similarly, "exploitation" is understood to encompass a variety of activities, including extractive processes (mining, fishing, logging, etc.) and construction of mega-projects (dams, nuclear plants, hydro-electric facilities, wind farms, land reclamation, large-scale farming), that are intended to make use of natural resources, particularly for large-scale commercial gain. The Special Rapporteur also recognizes that conservation activities carried out with an accompanying commercial benefit, such as game parks and reserves, forests preserved to offset carbon emissions and the like, often raise the same concerns related to the exercise of peaceful assembly and association rights.

[4] Andrea Alforte and others, "Communities as Counterparties: Preliminary Review of Concessions and Conflict in Emerging and Frontier Market Concessions" (Rights and Resources Initiative, 2014). Available from www.rightsandresources.org/wp-content/uploads/Communities-as-Counterparties-FINAL_Oct-21.pdf.

[5] Defensoría del Pueblo (Ombudsman's Office), press note 041/OCII/DP/2015, 5 March 2015. Available from www.defensoria.gob.pe/portal-noticias.php?n=13353 (accessed 10 March 2015).

[6] Defensoría del Pueblo (Ombudsman's Office) Colombia, *Vigésimo Primer Informe del Defensor del Pueblo de Colombia al Congreso de la República* (Bogotá, Defensoría del Pueblo, 2013), p. 35.

[7] Response to questionnaire, Constitution of Burkina Faso, art. 30.

countries but does not share in the benefits of those resources because of inadequate governance. More than 80 per cent of the 58 resource-rich countries in the Resource Governance Index fail to meet satisfactory governance standards.

9. Citizen engagement in the natural resources sector is notoriously difficult, with some sectors, such as oil, gas and mining, presenting heightened risks of human rights abuses because they are especially lucrative. The State plays a significant role in regulating access to exploitation opportunities. Secrecy cloaks decision-making processes and outcomes; there is a lack of mechanisms through which interested parties may express their concerns; discussions are often highly technical; and, above all, the financial stakes are often massive. This opaque and lucrative environment presents ideal conditions for corruption to thrive, a challenge with which many resource-rich countries have to contend.

10. The Special Rapporteur believes that the rights to freedom of peaceful assembly and of association play a key role in opening up spaces and opportunities for genuine and effective engagement by civil society in decision-making processes across the spectrum of natural resource exploitation activities. These rights help foster increased transparency and accountability in the exploitation of resources and are basic prerequisites for the ultimate goal of securing substantive rights. Peaceful assembly and association rights can facilitate constructive dialogue, which is necessary given the shared interests and sometimes competing priorities that are intrinsic to exploiting natural resources.

11. When the rights to freedom of peaceful assembly and of association are restricted contrary to international human rights law standards, questions automatically arise as to how genuine consultation processes or decisions are and how valid is the expression of free, prior and informed consent of affected parties. While restricting these rights in order to streamline resource exploitation may seem tempting to States and corporations[8] in the short term, it can be costly in the long run and cause irrevocable damage. As the Special Rapporteur has previously noted (see A/HRC/26/29, para. 26), the failure to provide any outlet for excluded groups to air their grievances can be counterproductive and carry severe consequences. He believes that social conflicts experienced in the context of natural resource exploitation are a stark demonstration of the truth of this statement.

12. The overall political environment in a State can also have a profound impact on the exercise of peaceful assembly and association rights. States that generally do not respect or facilitate those rights are unlikely to be any more accommodating in the context of natural resource exploitation. In fact, the Special Rapporteur believes that the space to exercise peaceful assembly and association rights is often more limited in relation to natural resource exploitation because of the significant impact this sector has on the economies of resource-rich countries, the bottom lines of the enterprises involved and the potential for corruption. Having citizen engagement is, therefore, imperative throughout the decision chain right from the initial stages of the process when exploration potential is determined, through to exploitation activities and investment of revenue.[9] The rights to freedom of peaceful assembly and of association provide the necessary avenues for this engagement.

B. Key actors in the natural resource exploitation field

13. International human rights law places the primary obligation for the respect, protection and fulfilment of rights on the State. In the context of natural resource

[8] The terms "corporation", "company", "business enterprises" and "private sector" are used generically to refer to for-profit enterprises involved in exploitation operations, even if they are State-owned, unless otherwise indicated.

[9] See, e.g., the Natural Resource Charter.

exploitation, the obligations may appear to be somewhat distorted owing to the sometimes complex relationships that exist between Governments and the private sector. Governments may engage in for-profit ventures through State-owned or State-run companies, blurring non-profit and for-profit interests and the role of the State in ensuring a level playing ground for both sectors. Moreover, the close relationship that exists between Governments and the private sector is one that the Special Rapporteur has highlighted previously as creating, in some instances, undue advantages for business at the expense of other sectors of society (see A/69/365, paras. 10–12).

14. States are obligated to protect and facilitate the rights to freedom of peaceful assembly and of association in the context of natural resource exploitation, including by ensuring that business interests do not violate these rights. To discharge their duties in that respect, States should, among other things, enact robust national laws that stipulate the rights and responsibilities of all, create independent and effective enforcement, oversight and adjudicatory mechanisms, ensure effective remedies for violations of rights and promote awareness of, and access to information about, relevant policies and practices related to natural resource exploitation.

15. States also have an obligation to prevent conflict before it starts, including by creating a legal environment that promotes transparency and fairness. The area of land rights, for example, is often key. The absence of legal frameworks that clearly spell out land rights creates opportunities for arbitrary expropriation or land grabbing, which in turn can lead to conflict. Opaque procedures for granting exploitation licences and concessions aggravate the situation and often fuel social protests.

16. States that host natural resource exploitation operations ("host States") have to contend not only with powerful corporations exerting their influence, but also with the so-called "States of origin", whose economies stand to benefit from the taxes and other remittances arising from corporations' profits. States of origin will therefore make significant efforts to facilitate opportunities in foreign markets for companies domiciled in their territory. An indication of this elevation of business interests in international relations is that, in some countries, the trade and investment portfolios are being merged with the foreign affairs and development agendas of Governments. In principle, States have a legitimate interest in pursuing channels that open up business interests for their citizens. But undue deference to business interests at the expense of other legitimate interests, such as human rights, is a source of acute concern.

17. The central role of corporations in natural resource exploitation means that they can potentially wield enormous power and influence over host States, rendering authorities unwilling to intervene in their interests. Corporations gain access to the corridors of power and often have the ear of key officials (sometimes through unethical means) and are therefore in a position to influence decisions in their favour at the expense of opposing views of other interested parties, including affected communities. The increasing globalization of access to markets underscores the need to regulate the natural resource exploitation sector at the international level to ensure the preservation of all rights, including peaceful assembly and association rights.

18. The complexities of influence between the host State and States of origin is replicated among corporations, where parent companies domiciled in one State may have subsidiaries in other countries exercising various degrees of influence on the policies and practices of the latter entities. Furthermore, international and national financial institutions often have a significant stake in natural resource exploitation activities that they may be supporting financially. Their actions or inaction, primarily through the leverage they have as financiers, could have an impact on the human rights of affected communities, including peaceful assembly and association rights. The Special Rapporteur subscribes to the premise that international human rights law ascribes the primary duties to States, acting individually

or as members of multilateral institutions. These obligations apply within the territory of the State and extraterritorially. Similarly, non-State actors have responsibilities in relation to human rights, as will be discussed below.

19. In many cases, the most egregious violations of the rights to freedom of peaceful assembly and of association in the context of natural resource exploitation are committed against groups and individuals inhabiting regions far from centres of power, who are often at risk or already marginalized within society. They may lack access to information or the means of effectively advocating for their concerns, or they may be confronted with authorities are that are unable or unwilling to address their grievances. The ability to freely associate and to peacefully assemble are indispensable in this regard. Some of the categories of persons that require special attention in the context of the rights to freedom of peaceful assembly and of association and of natural resource exploitation are women (including women human rights defenders), Afro-descendants, indigenous peoples, peasant farmers, fisher folk and forest dwellers.

C. International legal and regulatory framework

20. A complex web of binding international law and voluntary standards and principles regulate and inform the human rights obligations of States and companies in the field of natural resource exploitation. In general, States are bound by international human rights law, while companies adhere on a voluntary basis to standards and principles drawn up by Governments, multi-stakeholder platforms or business forums. Those laws and standards cover a broad range of interests, many of which have implications for the rights to freedom of peaceful assembly and of association.

21. The rights to freedom of peaceful assembly and of association find expression at the global level in article 20 of the Universal Declaration of Human Rights and in articles 21 and 22 of the International Covenant on Civil and Political Rights.[10] The International Labour Organization (ILO) Convention concerning Freedom of Association and Protection of the Right to Organise, 1948 (No. 87), and the ILO Convention concerning the Right to Organise and Collective Bargaining, 1949 (No. 98), protect the rights of workers to freely establish, join and run organizations of their choosing without unjustifiable interference from the State. Workers are also protected from anti-union discrimination and guaranteed the right to collectively bargain.

22. Although States often refer to the permissible limitations embedded in the provisions and instruments cited above, the Special Rapporteur reiterates that the rights to freedom of peaceful assembly and of association should be viewed as the rule and the limitations as the exception (see A/HRC/20/27, para. 16). States may only limit the rights in strictly defined circumstances necessitated by narrowly defined "legitimate reasons".[11] Such restrictions must be prescribed by law and are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or

[10] Common articles 1(2) of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights guarantee the right of all peoples to freely dispose of their natural wealth and resources. There are also national, regional and international laws and standards relating to the rights of indigenous peoples, labour, the environment and natural resource exploitation activities, such as mining, forestry and fishing, which may impact the exercise of the rights to freedom of peaceful assembly and of association to varying degrees. More broadly, trade and investment agreements, commodity certification systems and the like may also present opportunities to encourage or undermine civil society participation in the processes related to natural resource exploitation.

[11] International Covenant on Civil and Political Rights, arts. 21 and 22 (2).

morals or the protection of the rights and freedoms of others. They must also be proportionate to the pursuance of legitimate aims.[12] Thus, a blanket prohibition of protests outside business premises or surrounding the operations of mining, resource and forestry companies would be unjustifiable under the International Covenant on Civil and Political Rights. Similarly, broad definitions of "vital installations" or "national interests" that encompass business premises engaged in natural resource exploitation, with a view to shielding them from peaceful assemblies, would not meet international human rights law standards.

23. There are no international law instruments in which binding legal obligations for corporations are provided for. However, it is understood that human rights, being universal, indivisible and interdependent, are to be respected by all. The Special Rapporteur takes note of Human Rights Council resolution 26/9 on the elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, which stresses the primary responsibility of States to protect against human rights abuses by third parties within their territories. The Special Rapporteur considers that an instrument negotiated to create binding obligations for corporations is desirable and should set forth norms for all business entities, national and transnational.

24. A notable shortcoming of the voluntary obligations for corporations is that they do not go far enough in ensuring that both States and businesses are held accountable for any failures to comply with them, nor do they encourage robust oversight by Governments of actions by businesses that may violate human rights. Several documents set out voluntary human rights obligations for companies in relation to human rights in general and the rights to freedom of peaceful assembly and of association in particular. These include:

(a) The United Nations Global Compact, a broad initiative on corporate responsibility covering the areas of human rights, labour, environment and the prevention of corruption. Two of the Compact's 10 principles emphasize the role of business in supporting and respecting the protection of internationally recognized human rights, and to ensure they are not complicit in human rights abuses. A third principle requires businesses to uphold the freedom of association and recognize the right to collective bargaining;

(b) The Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council in 2011, which set out three pillars to the relationship between business and human rights. Firstly, States have the obligation to respect, protect and fulfil human rights and they should do this by taking measures that ensure businesses respect human rights, including by promoting and enforcing enabling laws and policies. Secondly, business enterprises have the obligation to respect internationally recognized human rights. Thirdly, States are required to ensure that victims of human rights violations have access to effective remedies including judicial and non-judicial remedies (Guiding Principles 25–28);

(c) The Voluntary Principles on Security and Human Rights, designed specifically for the extractive industries sector, to help companies maintain the safety and security of their operations while maintaining respect for human rights. The Voluntary Principles acknowledge the primary role of Governments for maintaining law and order and ensuring human rights. Furthermore, the Principles state that companies should use their influence (i) to ensure that individuals implicated in human rights abuses do not provide security services for companies; (ii) to limit the use of force to circumstances when it is strictly necessary and to an extent proportional to the threat; and (iii) to ensure that the

[12] See Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation on States parties to the Covenant, para. 6.

human rights of individuals are not violated, including the rights to freedom of peaceful assembly and of association;

(d) The International Code of Conduct for Private Security Service Providers, a multi-stakeholder initiative convened by the Government of Switzerland to set standards and principles for the conduct of private security service providers based on international human rights and humanitarian law.[11] The initiative establishes an external independent oversight mechanism to enhance accountability;

(e) The Organization for Economic Cooperation and Development Guidelines for Multinational Companies, non-binding principles and standards recommended by adhering States for responsible business conduct. The Guidelines are actively promoted by Governments through national contact points, which also provide mediation and conciliation platforms to resolve issues that may arise. Enterprises are encouraged to respect internationally recognized human rights norms and support the promotion of respect for the freedoms of expression, assembly and association online. The recommendations largely mirror those contained in the Guiding Principles on Business and Human Rights discussed above.

25. Many States consider that their obligations in relation to human rights apply only within their borders. In recent years, efforts have been made to highlight States' extraterritorial obligations, which are inherent in international human rights law. The Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights were compiled by international experts as a restatement of international law clarifying States' extraterritorial obligations. Although conceived in relation to economic, social and cultural rights, the principles are also applicable to civil and political rights. Of interest to the Special Rapporteur is the obligation for States to adopt and enforce measures to realize rights not only where the threat or harm occurs within their territory, but also "where the corporation or its parent or controlling company, has its center of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned" (principle 25 (c)). Broadening the concept of responsibility to include more than one State not only strengthens underlying rights, it also increases the chances of victims obtaining redress when violations occur.

26. Initiatives such as the Extractive Industries Transparency Initiative and the Open Government Partnership enshrine the role of citizens in policymaking processes, including those related to natural resource governance.

27. The objective of the Extractive Industries Transparency Initiative is to promote openness and accountability in the management of natural resource exploitation through a global standard.[12] Implementation and monitoring of the standard is overseen by an international board and national multi-stakeholder groups, consisting of representatives from Governments, companies and civil society representatives. The underlying rationale is that the management of natural resources in any country is a shared interest and can only be effective when all stakeholders have access to relevant information and are able to act on this information to promote sustainable economic and social development. To achieve the objectives of the Initiative, implementing countries are required, among other things, to

[11] Also of interest is the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict, which resulted from an initiative by the Swiss Government and the International Committee of the Red Cross to reiterate international humanitarian and human rights law principles that govern the activities of private military and security companies in the context of armed conflict (see A/63/467-S/2008/636, annex).

[12] Available from https://eiti.org/files/English_EITI_STANDARD.pdf.

ensure that an enabling environment exists for civil society to engage in the process and express views related to natural resource governance, including in relation to laws, regulations and administrative rules and practice. In its civil society protocol, the Initiative outlines that the rights of civil society to expression, operation, association, engagement and access to public decision-making in the implementing countries must be respected.

28. Similarly, the Open Government Partnership provides a platform for civil society to engage in a lasting dialogue with Governments to ensure that the latter are more open, accountable and responsive to their citizens. Participating States subscribe and commit to the values and principles in the Open Government Declaration, including supporting civic participation. These values include protecting the ability of not-for-profit and civil society organizations to operate in ways consistent with a commitment to freedom of expression, association, and opinion. The policy document entitled "Policy upholding the values and principles of the Open Government Partnership, as articulated in the Open Government Declaration", which was agreed upon by the Partnership's Steering Committee on 25 September 2014, provides a means of reacting to developments in participating countries that fall short of State commitments.

29. The Special Rapporteur considers the Extractive Industries Transparency Initiative and the Open Government Partnership important for enhancing the public's access to information and for reforming government policies that lead to exclusion, inequality and the marginalization of those who should benefit from natural resource exploitation. These initiatives can reinforce and open more space for civil society to engage with other stakeholders in decision-making on natural resource exploitation, but only if there is an enabling environment for civil society as a whole. General restrictions on civil society negatively affect their participation within these initiatives, and it is unacceptable to create space only for civil society working on natural resource issues. Effective participation by civil society in these initiatives and the ability of a broader portion of civil society to freely associate and peacefully assemble are both necessary.

D. Challenges applicable to both the rights to freedom of peaceful assembly and of association

30. Natural resources present something of a dilemma for even the most conscientious of States. They are a source of economic wealth, yet this wealth also brings the potential for conflict and fierce competition. If natural resources belong to the State itself, and the State is composed of the people, how exactly should resources be shared? What if communities living on the land to be exploited hold other values superior to the value of the economic potential of their land? And who makes the final decision? Ensuring that all voices are heard, including through the free exercise of peaceful assembly and association rights, promotes equitable sharing of benefits.

31. The Special Rapporteur has found that States are typically eager to shape their legal and practical environments in ways that encourage investors to exploit natural resources. Global competition for investment is fierce, and businesses, by their nature, tend to favour environments with less regulation so that they can maximize profits. There is thus something of a "race to the bottom" among States in terms of creating an enabling environment for business. For example, the Environmental Law No. 30230 of Peru reduces the ability of authorities to create natural reserves exempt from exploitation and reduces the time within which environmental impact assessments should be produced.[15]

[15] From the response to questionnaire

32. This race to the bottom may benefit the business sector, but it is often to the detriment of individuals and communities living on land slated for natural resource exploitation. For businesses, time is money, and consultation with communities is rarely seen as "efficient". At best, States may discourage drawn-out consultation processes that genuinely take into account the concerns of affected communities. At worst, States may resort to harassment and persecution of members of these communities, as well as members of associations investigating alleged violations or people having organized or participated in protests, as noted by the Working Group on Business and Human Rights (see A/HRC/23/32, para. 13).

33. The Special Rapporteur is concerned that, of the numerous cases of violations of the rights to freedom of peaceful assembly and of association reported, comparatively few have been fully investigated, with the perpetrators brought to account. By contrast, the number of arrests and prosecutions for alleged offences committed in the course of the legitimate exercise of the rights to freedom of peaceful assembly and of association continues to rise.

34. Legal mechanisms, such as injunctions, civil damages and trespass and defamation suits, are often used to curtail the work of civil society organizations and individuals engaged in defending rights in the context of natural resource exploitation. The increasing use of so-called "strategic litigation against public participation" suits is of concern because of the chilling effect the proceedings may have on the legitimate expression of dissent or opposition, including through peaceful protest. These suits may be brought by corporations against individuals or associations that are critical of natural resource exploitation activities in order to intimidate them or deter them from their work by burdening them with litigation costs and damages they may be unable to pay. The Special Rapporteur emphasizes that an independent judiciary should play a positive role in recognizing and upholding international human rights standards , especially in contexts where human rights defenders and communities are subjected to legal proceedings for exercising their rights to freedom of peaceful assembly and association.

35. The Special Rapporteur has in previous reports highlighted the significant role that effective remedies play in promoting accountability for human rights violations, stating that States have an obligation to establish accessible and effective complaints mechanisms that are able to independently, promptly and thoroughly investigate allegations of human rights violations or abuses in order to hold those responsible accountable (see A/HRC/20/27, paras. 77–81). The lack of adequate compensation for violations related to natural resource exploitation may contribute to increased social tensions, with communities feeling at a loss for obtaining redress by alternative means. In the context of natural resource exploitation, the Special Rapporteur believes that this obligation to provide remedies lies not only with host States but also with States of origin.

36. The obligations of States to ensure the respect of human rights by corporations engaged in natural resource exploitation in their own territory is clear. Less well-developed and understood are the extraterritorial obligations of States arising from the international human rights standards to which they have voluntarily acceded. At a minimum, States of origin should ensure that victims of human rights violations have effective judicial remedies. Doing so also entails a monitoring responsibility to ensure that companies operating abroad adhere to international human rights standards. States from the global North and Brazil, China, India, the Russian Federation and South Africa, where many of the companies engaged in natural resource exploitation around the world are domiciled, have an especially important role to play in this regard. For example, civil society groups in Latin America have in public hearings at the Inter-American Commission on Human Rights highlighted the significant role of Canadian companies in human rights violations in the region, and the support provided by the Government of Canada, despite these allegations.

37. The Special Rapporteur strongly urges all Governments to weigh carefully their involvement in natural resource exploitation activities that have the potential to violate human rights. Introspection is especially needed in view of the State practice of merging foreign affairs, trade and international development portfolios and thus encouraging the alignment of sometimes disparate objectives.

38. As a starting point, he commends the decisions of various State institutions, such as the government pension funds of Norway and Sweden, to divest themselves of interests in corporations deemed to engage in acts of environmental degradation or violations of human rights and labour standards.[16] Some States have enacted laws that prohibit and punish the bribery of foreign public officials and sanction companies that do not prevent bribery.[17] The Special Rapporteur notes that these laws are a step in the right direction but more still needs to be done. He encourages similar initiatives in respect of violations of human rights abroad.

E. Challenges to the right to freedom of peaceful assembly

39. International human rights law affirms the right of individuals to express their opinions, even if these opinions are unpopular or in opposition to government views or policies.[18] The right to freedom of peaceful assembly is an essential vehicle for people to express their opinions, and this right cannot be limited based solely upon an assembly's message or content. Despite this, the Special Rapporteur has found that content often plays a decisive role in whether peaceful assemblies are facilitated or suppressed. Assemblies that support the Government's position are rarely, if ever, obstructed, while those that oppose the Government's position are at much greater risk for suppression. This is true generally, but particularly in the context of natural resource exploitation.

40. The Special Rapporteur holds the view that as long as such an assembly is peaceful, States have the obligation to facilitate the gathering whether or not authorities agree with the content of the message. Any interference with such peaceful assemblies, including dispersal, should meet the strict tests of necessity and proportionality stipulated in international human rights standards.

41. The Special Rapporteur reiterates that the guarantees provided by international human rights standards relate only to assemblies that are peaceful (see A/HRC/20/27, para. 25). When violent incidents occur within otherwise peaceful assemblies, authorities have a duty to distinguish between peaceful and non-peaceful demonstrators, take measures to de-escalate tensions and hold the violent individuals — not the organizers — to account for their actions. The potential for violence is not an excuse to interfere with or disperse otherwise peaceful assemblies. This principle is all the more important because violence in the course of peaceful protests may be instigated to justify the dispersal of a protest.

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[16] Norway, Ministry of Finance, "The Management of the Government Pension Fund in 2013" (available from www.regjeringen.no/contentassets/5434cb3d2ff04441a21a2c9b1d55ca06/en-gb-pdfs/stm201320140019000engpdfs.pdf), p. 108; Second Swedish National Pension Fund, "Swedish AP Funds exclude four companies accused of contravening international conventions", 30 September 2013 (available from www.ap2.se/en/Financial-information/Press-releases/2013/swedish-ap-funds-exclude-four-companies-accused-of-contravening-international-conventions-/).

[17] The United Kingdom Bribery Act 2010 and the United States Foreign Corrupt Practices Act of 1977. In the United States of America, under the 2010 Dodd–Frank Wall Street Reform and Consumer Protection Act, section 1502, the enhancement of transparency over conflict minerals from the Democratic Republic of Congo is sought.

[18] See International Covenant on Civil and Political Rights, art. 19.

42. In countries experiencing social conflict over natural resource exploitation, individuals who exercise their right to freedom of peaceful assembly are frequently framed as "inciting" communities to resist and disrupt "development projects". Peaceful assembly and association rights are not seen as a legitimate vehicle to express concerns, but as deliberate attempts to undermine the State's efforts to promote economic growth and development. Those who oppose natural resource exploitation activities are labelled as "anti-development" or "enemies of the State". Attacks are also used as an intimidation tactic to force communities to accept exploitation projects.

43. It is particularly reprehensible when the vilification and stigmatization comes from the highest government authorities, as this sends a clear message to other officials that it is acceptable to perpetuate the intimidation and harassment of activists and defenders. Negative images of activists and human rights defenders are exacerbated when the media picks up on the portrayals and publishes them.

44. Negative perceptions of the exercise of the right to freedom of peaceful assembly are also manifested through the increasing harassment, intimidation and criminalization of activities by environmental, land rights and other activists and groups that advocate for the effective consultation and participation of affected communities in decisions affecting them. They are charged with crimes that often carry severe sentences, such as sabotage and terrorism. In Chile, the Mapuche indigenous peoples, who have long protested over the loss of their lands and territory, were charged (though eventually acquitted) under the country's anti-terrorism law; legitimate protest had thus been equated with criminal offences (see A/HRC/21/47/Add.3, case CHL 1/2011, and A/HRC/19/44, case CHL 1/2011). In the Philippines, penalties have been imposed under the Penal Code for "grave coercion", an offence defined as using violence to prevent another person from doing something that is not unlawful or compelling the person to do something against their will.[19] The Special Rapporteur was informed that peaceful protestors who obstruct mining company employees and equipment are often charged with grave coercion. Civil society organizations in Canada have expressed concern about the definition of "activities that undermine the security of Canada" contained in the Security of Canada Information Sharing Act proposed in Bill C-51 (Anti-Terrorism Act) and the potential for the authorities to interfere with legitimate peaceful protests that they define as "undermining" security.[20] The Australian State of Tasmania in November 2014 enacted the Workplaces (Protection from Protestors) Act 2014, which makes it a criminal offence to participate in a protest that may obstruct or prevent a business activity or access to a business premises (see also A/HRC/28/85, case AUS 3/2014).

45. Violations are perpetrated in many resource-rich countries where authorities and others rely on criminalization to intimidate communities into giving up their land for industry. In Brazil, confrontations between non-indigenous farmers and indigenous groups have led to criminal prosecution of the latter for occupying lands as a form of protests (see A/HRC/12/34/Add.2, para. 49). The Special Rapporteur on the rights of indigenous peoples has reported that the Government of Argentina had responded to protests from indigenous groups opposing evictions or other projects by prosecuting those involved (see A/HRC/21/47/Add.2, paras. 51, 56 and 57). In Ecuador, the Committee on Economic, Social and Cultural Rights has expressed concern about the criminal investigations and convictions of indigenous leaders protesting against legislative proposals concerning water management and development projects (see E/C.12/ECU/CO/3, para. 10).

[19] Revised Penal Code of the Philippines, art. 286.

[20] See British Columbia Civil Liberties Association, submission to the Standing Committee on Public Safety and National Security, March 2015. Available from https://bccla.org/wp-content/uploads/2015/03/BCCLA-Submissions-on-C-51-For-website.pdf.

46. Furthermore, perceived leaders of movements or protests are often subjected to particularly egregious violations of their rights, such as disappearances and arbitrary killings in an effort by States and corporations to intimidate and thus disrupt organized efforts to resist exploitation activities. In Orissa, India, anti-mining campaigners have been killed, and 42 women defenders at the forefront of demonstrations against dams were jailed for protesting (see A/HRC/19/55/Add.1, para. 76).

47. The Special Rapporteur has received numerous reports concerning violations of the rights of human rights defenders, activists and community members who exercised their rights to freedom of peaceful assembly in the context of natural resource exploitation. Civil society activists in countries such as Colombia (A/HRC/28/85, case COL 7/2014), the Philippines (A/HRC/27/72, case PHL 2/2014) and Thailand (A/HRC/24/21, case THA 3/2013), to name a few, have paid with their lives for leading advocacy campaigns against natural resource exploitation operations. According to the Special Rapporteur on the situation of human rights defenders, human rights defenders working on extractive and the construction and development projects in the Americas were the subject of most communications to her and faced the highest risk of death as a result of their human rights activities (see A/HRC/19/55, para. 71). In South Africa, over 30 miners at the Marikana Mine were shot and killed by police during a strike, although the workers' action was not entirely peaceful (see A/HRC/22/67 and Corrs.1 and 2, ZAF cases 3/2012). In Guatemala, where agriculture provides the main livelihood for the majority of the population, competition between landowners, farmers, indigenous communities and their associations and large-scale commercial agricultural and mining projects has resulted in the criminalization of social movements and their claims (see A/HRC/26/29/Add.1, paras. 193–199, and A/HRC/10/12, para. 34–35).

48. It is worth emphasizing that peaceful protests are typically a measure of last resort, when scope for effective engagement with the authorities or businesses is otherwise limited. In some cases, communities may have gone through consultation processes only to find them, from their perspective, improperly conducted, compromised, corrupt or otherwise unsatisfactory. In other cases, agreements reached between the parties may not be not adhered to. For example in Myanmar, protests against the Monywa Copper Project were allegedly sparked in 2012 when the corporation involved in the mining operations reneged on an agreement with affected villagers to halt operations pending negotiations with them. Police later moved in to disperse the peaceful protest camps using inordinate force (see A/HRC/25/64, para. 28). A failure by a company to abide by a contract signed with the owners of community territory in La Sierrita de Galeana in Mexico also resulted in a peaceful protest that was violently dispersed, allegedly under the instructions of company officials.[21]

49. Unfortunately, despite their potential for mitigating the underlying reasons for many peaceful protests in the context of natural resource exploitation, consultation mechanisms are often overlooked or employed inadequately. International human rights law and standards mandate that free, prior and informed consent is a prerequisite for the exploitation of natural resources in areas owned by indigenous peoples. As recommended in the Guiding Principles on Business and Human Rights, due diligence, including conducted through human rights impact assessments before the start of the project, is key for ensuring that exploitation activities do not violate the rights of affected communities.

50. In this regard, the Special Rapporteur welcomes the launch by Colombia of new public policy guidelines on human rights and business in July 2014.[22] The guidelines are

[21] Submission by the Project of Economic, Social and Cultural Rights, November 2014, pp. 10–11.
[22] Response to the questionnaire.

being promoted as a way to guarantee that business operations are conducted in accordance with human rights. He similarly welcomes information from the Government of Costa Rica that indicates that the country's overarching legal norms regulating commercial agreements guarantee the rights to freedom of peaceful assembly and association.[73] Chile has recently assembled an interministerial commission responsible for reviewing and aligning regulations governing the General Consultation Process and the Environmental Impact Evaluation System. This action was a direct consequence of criticism levelled at existing indigenous participation mechanisms by the National Institute of Human Rights and the Human Rights Centre of Diego Portales University.[74]

51. The freedom to assemble peacefully is required in order for consultations among stakeholders to be convened. The ability to peacefully assemble is impeded in environments where insecurity and conflict prevails.. The neutrality of the consultations needs to be maintained throughout the process. For consent to be free, prior and informed, consultations should be conducted in an environment free of intimidation or fear, meaning that meetings should be free from infiltration by security organs, surveillance and attendance by uniformed or armed law enforcement agents. A level playing field should be ensured for all stakeholders to have free access to relevant information and assurances that their grievances will be heard.

52. The Special Rapporteur notes that requirements to obtain prior authorization before gatherings related to the exploitation of natural resources — such as information sessions, consultations, public hearings and the like — not only infringe on the right to freedom of peaceful assembly, they also impede the right of affected communities to access information and participate in decision-making. In Uganda, non-governmental organizations working on oil issues are reportedly required by authorities to seek permission, in particular from the Ministry of Energy and Mineral Development before they can meet with grassroots communities, although the authorities have made efforts to remedy this situation.[75]

53. Peaceful assemblies whose focus is on natural resource exploitation may also attract increased attention from law enforcement officers, with some groups alleging that they are under greater scrutiny. In Canada, for example, civil society sources claim that First Nations communities and environmental groups "have been under a special program of government surveillance, and the information was shared among security agencies, government departments and industry about groups that oppose resource development projects".[76]

54. An issue of significant concern to the Special Rapporteur is the use of private military and security companies to protect the property and facilities of corporations engaged in natural resource exploitation. These companies may be contracted by the corporations or, as in the case of Equatorial Guinea, by the Government (see A/HRC/18/32/Add.2, para. 46). Companies may also have contracts with Governments to have members of the police force seconded to them, as in Somalia (Puntland) (see A/HRC/24/45/Add.2, para. 24).

55. The Special Rapporteur is alarmed by the latitude afforded to corporations and private military and security companies in relation to policing, and often suppressing, peaceful protests. He echoes the grave concerns expressed by other special procedures

[73] Response to the questionnaire.
[74] Response to the questionnaire.
[75] Human Rights Watch, "Uganda: Growing Intimidation, Threats to Civil Society", 21 August 2012. Available from www.hrw.org/news/2012/08/21/uganda-growing-intimidation-threats-civil-society.
[76] See website of Voices-Voix: http://voices-voix.ca/.

mandate holders about these companies suppressing legitimate advocacy activity, particularly social protest, and their attacks on human rights defenders (see A/HRC/7/7/Add.4, para. 71, and A/HRC/19/55, para. 63). In his view, the potential for violations of rights, including to peaceful assembly and association rights, is particularly high when law enforcement responsibilities are ceded to private actors, who are accountable to their clients rather than to the public. Private security companies have also been known to receive concessions to exploit natural resources in exchange for their services, further blurring the interests and relationships between the actors (see A/61/341, para. 74).

56. The Special Rapporteur reiterates that the primary responsibility for ensuring public security, law and order for the benefit of all within a State's boundaries lies with the Government of that State. The State should also regulate, control and monitor the activities of private security firms, including those contracted in the natural resource exploitation sector, and hold them accountable when they breach the rights to freedom of peaceful assembly and of association.

F. Challenges to the right to freedom of association

57. Associations involved in environmental protection, or community mobilization against natural resource exploitation activities, or generally any activities that are perceived as a threat to natural resource exploitation operations, face heightened risks of restrictions of their rights. Associations are a vehicle for people to join their voices together on an issue of common concern, thus amplifying their grievances. Associations also gather together or facilitate access to resources, such as funding, skills, knowledge and solidarity. This aggregation brings increased power and, when this power is deployed to oppose natural resource exploitation activities, it can be threatening to those with financial stakes in the projects. It is thus not surprising that States and corporations may use a variety of measures to interfere with the right to freedom of association.

58. Restrictive laws, for example, are used to target organizations working on issues that the authorities find sensitive. Emblematic of this approach is the use by Ecuador of Executive Decree No. 16 to close the Pachamama Foundation, which had worked peacefully and legitimately for 18 years to defend human rights, especially the rights of indigenous peoples in the Amazon (A/HRC/26/21 and I.C.J. 4/2013).

59. The Special Rapporteur has on many occasions emphasized that the right to freedom of association applies to informal associations and does not require that a group be registered. If a registration regime is to be established, he favours a "notification" regime for the establishment of associations rather than "authorization". A notification system has a particular resonance in the context of natural resource exploitation, where lobbying and advocacy is often done through social movements that may not have a formal organizational structure. Authorities and companies may be less inclined to engage with these movements because of their informal nature and may in fact accuse them of being illegal for being unregistered.

60. The ability of associations to participate in consultation procedures, such as environmental and social impact assessments, should not be predicated on onerous conditions, including registration requirements, membership or activities stipulated in their charter or statutes. The Special Rapporteur notes efforts made by Austria and Romania to ensure community engagement during impact assessment processes and Armenia to ensure

access to environmental information by the public."[27] He emphasizes that concerned community groups should not be subjected to unreasonable requirements, such as minimum membership numbers, in order for their concerns to be heard and taken on board. A reasonable demonstration of interest in the impact of the exploitation activities should be sufficient for associations and groups to present their views in consultation procedures.

61. Similarly, a group's formal registration or recognition by authorities should not be required in order for associations to challenge decision-making processes related to environmental issues or natural resource exploitation. Recognition should not confer advantages that would not be available to unregistered or unrecognized groups. In particular, recognition or non-recognition should not be used as a basis for authorizing or restricting scrutiny by associations of the natural resource exploitation industry. Associations should be free to engage in monitoring activities and to have access to information without undue interference by authorities, and be empowered with the ability to influence decision making processes.

62. Governments also place restrictions on access to foreign funding to curtail the activities of associations engaged in environmental protection work, which often focuses on natural resource exploitation activities. In India, for example, the Government in 2014 blocked funding from foreign sources to Greenpeace India, although the High Court ultimately ordered the release of funds.[28] In some States where the environment for fundraising by civil society organizations is generally restrictive, there have been efforts to limit restrictions on access to funding for groups working specifically on natural resource exploitation. The Extractive Industries Transparency Initiative has called on the Government of Azerbaijan, for example, to ensure that civil society representatives involved in the Initiative are able to access their bank accounts and can register new grants.[29]

63. Some States may also target members of civil society based on their foreign citizenship. In 2015, the Government of Cambodia, for example, refused to renew the residence permit of a Spanish environmental activist who was working with the local organization Mother Nature to halt a controversial hydroelectric project in the Areng valley.[30] The activist was later deported. The Special Rapporteur emphasizes that nationality is not a proper basis for limiting the rights to freedom of peaceful assembly and of association (see A/HRC/26/29, para. 25).

64. Individual human rights defenders and associations may also be subject to attacks, stigmatization, intimidation, surveillance, travel bans, and risk the suspension of their activities or even dissolution of the organization when they speak out against natural resource exploitation. The organization Publish What You Pay Uganda reported, for example, that they had had their equipment confiscated for nearly two months after trying to screen a documentary on lessons that could be learned from other resource-rich countries.[31]

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[27] Responses to questionnaire.

[28] Greenpeace, "Massive win for voices of dissent & democracy", 12 March 2015. Available from www.greenpeace.org/india/en/news/Feature-Stories/Massive-win-for-voices-of-dissent-democracy/.

[29] Minutes of 28th EITI Board Meeting, annex A, p. 25. Available from https://eiti.org/files/BP/Minutes-from-the-28th-EITI-Board-meeting-Myanmar_Final.pdf.

[30] Cambodian League for the Promotion and Defence of Human Rights (Licadho), "Civil Society Groups Condemn Use of Visa Denial to Curb Activism". Available from www.licadho-cambodia.org/pressrelease.php?perm=373.

[31] East and Horn of Africa Human Rights Defenders Project, "Only the brave talk about oil: Human rights defenders and the resource extraction industries in Uganda and Tanzania", November 2014.

65. As previously mentioned, the "race to the bottom" may result in weakened labour standards, in violation of the right to freedom of association for workers in the natural resource exploitation industry. In several countries, Governments have amended labour laws, weakening labour standards and making it harder for workers to unionize, collectively bargain and strike. In Kazakhstan, a recently enacted law on trade unions mandates compulsory affiliation of all trade unions to a federative body, denying trade unions the option to choose whether to be so affiliated or not (see A/HRC/29/25/Add.2).

66. The Special Rapporteur agrees with ILO that it constitutes a violation of the right to freedom of association when authorities and employers actively interfere with the operations of unions. Such interference includes refusing to recognize elected trade union officials, tampering with elections, forming their own competing unions and denying union members access to premises to conduct meetings. The ability of unions to hold meetings on their premises without prior authorization or interference and to choose their own representatives are essential elements of the right to freedom of association.[32] Certain employment practices are also a concern, particularly where they reduce workers' ability to organize or collectively bargain. The use of short-term contracts and precarious terms of employment for workers in extractive industries, for example, denies workers job security and the confidence to advocate for unionization and other rights.

IV. Conclusions and recommendations

67. **An environment that allows for the robust exercise of the rights to freedom of peaceful assembly and of association is essential in ensuring that natural resource exploitation is fair, transparent and accountable and benefits citizens. These rights encourage access to information, public participation and free, prior and informed consent and also highlight the gaps in the enjoyment of other rights related to land tenure, the environment and self-determination. The Special Rapporteur believes that the more consultation on any particular exploitation issue, the better. He also wishes to highlight that the benefits of such consultation — and the improved planning that results from extensive consultation — can be immense for society at large. One example is the Government Pension Fund Global of Norway, which was set up in 1990 to hold surplus wealth produced by Norwegian petroleum income.[33] It is now the largest sovereign wealth fund in the world.[34]**

68. **States bear the primary responsibility for promoting and protecting peaceful assembly and association rights. They must implement and strengthen mechanisms that enable them discharge this duty. One major problem with States' current legal frameworks, however, is a lack of proper enforcement mechanisms at both the domestic and international levels. Without such mechanisms, accountability will be, at best, sporadic and irregular.**

p. 12. Available from www.defenddefenders.org/wp-content/uploads/2013/01/only_the_brave_WEB.pdf.

[32] International Labour Organization, digest on freedom of association, paras. 130–132 and 432–438. Available from www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/publication/wcms_090632.pdf.

[33] For more information about the Fund, see www.nbim.no/en/the-fund/about-the-fund/.

[34] Penn Wharton Public Policy Initiative, "Statens Pensionsfund Utland: a cornerstone of Norway's energy policy", 20 March 2015. Available from http://publicpolicy.wharton.upenn.edu/live/news/632-statens-pensionsfund-utland-a-cornerstone-of.

69. A significant gap in ensuring that assembly and association rights are guaranteed in the context of natural resource extraction is created by the lack of binding norms for corporations, which are key actors in natural resource exploitation. A growing number of large businesses wield far more power, resources and influence than many States. A shrinking number of corporations dominate vast sectors of the global economy. Despite this, the primary responsibility for ensuring the exercise of human rights remains with States. This situation must evolve to meet the reality of today's world. Domestic and international law should impose binding obligations upon corporations to guarantee that their activities, including resource exploitation, comply with internationally accepted human rights standards.

70. The significance of civil society as a stakeholder in the context of natural resource exploitation is underestimated, misperceived and often denied by both States and businesses. This is symptomatic of a growing disregard for a plurality of views, particularly those which champion non-economic values over economic ones. Such disregard is counterproductive and divisive, and is likely contributing to an erosion of confidence in the world's prevailing economic system. It is thus in the interest of both States and corporations to recognize actions by civil society groups both in support of and against the entire decision-making chain in natural resource governance, as a legitimate exercise by these individuals and groups of their rights to freedom of peaceful assembly and of association.

71. In that regard, the Special Rapporteur reiterates recommendations made in previous reports to the extent applicable in this context, and makes the following recommendations.

A. States

72. The Special Rapporteur recommends that States:

(a) Ensure that they meet their obligations to respect, protect and fulfil human rights in accordance with international human rights law, including by encouraging the implementation of the Guiding Principles on Business and Human Rights; recognize the relevance of realizing the rights to freedom of peaceful assembly and of association in the context of natural resource exploitation in their laws, policies and practice; strengthen the legal framework that guides these exploitation activities, including by guaranteeing substantive rights to land tenure, labour and environment with special attention to marginalized groups;

(b) Create an enabling environment in which civil society can access relevant information, participate in decision-making and express opinions freely, including through peaceful assemblies, without threats of prosecution or other harm for legitimate opposition; ensure that cases of violations of human rights, including peaceful assembly and association rights, are promptly and impartially investigated and those responsible for the violations are held to account;

(c) Take appropriate measures to meet extraterritorial obligations, particularly by providing access to remedy for victims of violations of the rights to freedom of peaceful assembly and of association; measures should include but are not limited to:

(i) Strengthening the independence and capacity of judicial authorities to ensure that cases relating to violations of the rights to freedom of peaceful assembly and of association are adjudicated in accordance with international human rights law;

(ii) **Enacting, implementing and enforcing laws that prohibit and provide penalties for conduct by corporations that violates human rights abroad;**

(iii) **Ensuring that trade and other agreements on investment in natural resource exploitation activities, whether concluded bilaterally or multilaterally, recognize and protect the exercise of peaceful assembly and association rights for affected individuals and groups;**

(iv) **Consider the elaboration of an international legally binding instrument on human rights standards for businesses, as proposed by the Human Rights Council in its resolution 26/9, and ensure that these standards apply to businesses working domestically as well as internationally;**

(d) **Develop, in consultation with the private sector and civil society, binding laws and standards which ensure that private actors abide by international and domestic human rights norms, including in the context of natural resource exploitation;**

(e) **Subscribe to and increase the quality of implementation of existing multi-stakeholder initiatives, such as the Extractive Industries Transparency Initiative and the Open Government Partnership, which encourage civil society participation in the governance of natural resources; participating States should strengthen the role of the rights to freedom of peaceful assembly and of association in these initiatives;**

(f) **Ensure the provision of adequate security and public order management in accordance with international human rights law to preclude the need for private military and security companies to fill this gap.**

B. Corporations

73. **The Special Rapporteur recommends that corporations:**

(a) **Meet their obligations to respect internationally accepted human rights in their natural resource exploitation activities, including the rights to freedom of peaceful assembly and of association;**

(b) **Adhere to the principle to "do no harm", by avoiding causing or contributing to violations of peaceful assembly and association rights and preventing and mitigating violations linked to business relationships; corporations should also insist that States uphold peaceful assembly and association rights;**

(c) **Implement the Guiding Principles on Business and Human Rights by, among other things, making policy commitments to respect peaceful assembly and association rights and conducting due diligence in relation to human rights, including through human rights impact assessments;**

(d) **Subscribe to and increase the quality of participation in and implementation of existing multi-stakeholder initiatives, such as the Extractive Industries Transparency Initiative and the Open Government Partnership; participating corporations should strengthen their role in respecting the rights to freedom of peaceful assembly and of association in the framework of these initiatives;**

(e) **Provide avenues for compensation and other redress in the event of human rights violations related to natural resource exploitation activities;**

(f) **Ensure that international law standards relating to public participation and free, prior and informed consent are scrupulously adhered to in negotiations with groups affected by natural resource exploitation activities.**

C. Civil society

74. **The Special Rapporteur recommends that civil society:**

(a) **Strengthen knowledge of local, national, regional and international legislative framework regulating the protection of human rights;**

(b) **Strengthen research, monitoring and documentation capacity of violations of peaceful assembly and association rights in the context of natural resource exploitation;**

(c) **Increase and enhance engagement and participation in multi-stakeholder initiatives, through which civil society has the opportunity to engage in decision-making on natural resource governance;**

(d) **Continue to advocate for binding norms to ensure compliance by corporations to internationally agreed human rights standards.;**

(e) **Strengthen solidarity among civil society in host States and States of origin to raise awareness of violations and coordinate advocacy for accountability.**

D. Other actors

75. **The Special Rapporteur recommends that financial institutions (international and national) ensure that their investment choices do not encourage or support the violation of peaceful assembly and association rights.**

76. **He recommends that national human rights institutions consider increased investigation, research, monitoring and documentation of violations of peaceful assembly and association rights and providing avenues for redress where feasible.**

77. **He recommends that consumers and corporate shareholders consider the human rights record of companies when purchasing products or company shares, and ensure that those purchases do not encourage or support the violation of peaceful assembly and association rights. The Special Rapporteur also encourages shareholders and consumers to join with others in publicizing the human rights rationale behind their purchase and investment choices.**